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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. ~~854~~ 169

JAMES W. BOTHWELL, WILLIAM J. MICHEL, C. STANLEY HURLBUT, WILLIAM E. THOMSEN, ARTHUR M. SIEGK, Receivers of Employers Mutual Insurance and Service Company, Petitioners,

vs.

BUCKBEE, MEARS COMPANY.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

MORTON BARROWS,
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Counsel for Petitioners.

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JAMES W. BOTHWELL, WILLIAM J. MICHEL, C. STANLEY HURLBUT, WILLIAM E. THOMSEN, ARTHUR M. SIEGK, Receivers of Employers Mutual Insurance and Service Company, Petitioners,

vs.

BUCKBEE, MEARS COMPANY, a Corporation, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

To the Honorable the Supreme Court of the United States:

Your petitioners, the receivers of Employers Mutual Insurance and Service Company, respectfully pray for a writ of certiorari requiring the Supreme Court

of the State of Minnesota to certify to the Supreme Court of the United States for its review and determination the final judgment of the Supreme Court of the State of Minnesota in the case of James W. Bothwell, William J. Michel, C. Stanley Hurlbut, William E. Thomsen, Arthur M. Siegk, receivers of Employers Mutual Insurance and Service Company, plaintiffs-appellants, *vs.* Buckbee, Mears Company, a corporation, defendant-respondent, and to that end, and in accordance with the rules of the Supreme Court of the United States, the petitioners herewith present a certified copy of the transcript of record in said case, including all proceedings in the Supreme Court of the State of Minnesota, and submit the following statement of the matter involved and the general reasons relied on for the allowance of the writ, together with a brief in support of this petition.

Statement.

Your petitioners are the receivers of an insurance company, a corporation organized and existing under the laws of the State of Maryland for the specific purpose of giving its members conservative and reasonable insurance on a mutual plan, at the least possible cost, to printers, publishers, and others, against loss by reason of strikes occurring in the conduct of their business. The Employers Mutual Insurance and Service Company, hereinafter called the Company, is not and never has been licensed to do business in the State of Minnesota. Its only office is in Baltimore,

Md., and all its business is transacted from that office. The Company has not and never has had any property of any kind or character in the State of Minnesota, nor any agent or representative therein. Applications for membership are submitted by mail to the Company at Baltimore and are accepted or rejected by the Company at its office in Baltimore. Contracts of insurance issued by the Company are entered into, made, and executed in the State of Maryland. Advertising is the sole method relied on by the Company to procure new members, and losses are paid from the home office.

The application of the respondent for membership in the Company was procured in the following manner: A representative of the Company came to the State of Minnesota and at a meeting of printers, lithographers, and engravers, arranged by said representative and held in the city of Saint Paul, in said County and State, made certain representations and presented certain propaganda with reference to the character and desirability of the kind of insurance transacted and written by the said Company and at that time and place furnished blanks and forms of application for membership and insurance in said Company, and this respondent, receiving one of said blank forms, caused the same to be filled out and sent the same by mail, with its check covering the initial premium or assessment, to the home office of said insurance company at Baltimore. Thereupon the policy or contract was written and executed at the home office of said Com-

pany and mailed to the respondent at Saint Paul, Minn.

Thereafter an assessment was duly made and levied at the office of the Company in Maryland against all the members of said Company, including this respondent, and this respondent refused to pay said assessment. Subsequently and following the appointment of receivers of said Company an action was begun in the State District Court of Ramsey County in Minnesota on June 19, 1924, against the respondent to recover the amount of this assessment. Upon due hearing a judgment (R., 39) was ordered by the district court in favor of the petitioners and against the respondent for the amount of the assessment. An appeal from said order was thereupon taken by the respondent to the Supreme Court of Minnesota (R., 41). On March 5, 1926, the Supreme Court of Minnesota reversed the order of the district court and remanded the case for further proceedings (166 Minn., 285; 207 N. W., 724).

Thereupon and upon a rehearing of the case in the district court judgment was ordered in favor of respondent and your petitioners appealed from the judgment entered pursuant to said order to the Supreme Court of Minnesota, with the result that said judgment was by said Supreme Court of Minnesota affirmed on December 10, 1926 (R., 41, 42). All of which more definitely and circumstantially appears from the record herein.

The statutes of the State of Minnesota applicable to foreign insurance companies provide, among other things, as follows:

> That before any foreign insurance company shall be admitted or authorized to transact business in the State it shall, among other things, procure a license from the Secretary of State, and shall appoint the Insurance Commissioner its attorney for the service of summons and process. General Statutes Minnesota, 1923, Sections 3711-3713.

It was the contention of the defendant that this action could not be maintained in the courts of the State of Minnesota because the making of the contract of insurance was in contravention of the laws of the State of Minnesota and was therefore not enforcible therein. This view was adopted by the Supreme Court of Minnesota and is, in general, the basis of its decision and judgment.

Practically the same issues upon a similar state of facts were presented in *Benn vs. Commercial Travelers Association*, 261 U. S., 140, which case came before this Court for review upon a writ of certiorari directed to the Supreme Court of Minnesota.

Your petitioners submit the following general reasons for the allowance of the writ for the review by this Court of the judgment of the Supreme Court of the State of Minnesota:

I.

It appears from the pleadings and the record that the petitioners claimed and claim rights, privileges, and immunities, and especially under Article IV and under the XIVth Amendment to the Constitution; that the decision of the Supreme Court of the State of Minnesota enforces a law of that State which abridges the privileges and immunities of citizens of the United States, deprives your petitioners of liberty and property without due process of law, and denies to your petitioners the equal protection of the law; that the judgment entered by the Supreme Court of the State of Minnesota is a final judgment rendered by the highest court of the State of Minnesota in which a decision could be had in this case, and that a writ of certiorari is the only means available for procuring the review of the Minnesota judgment.

BRIEF.

I.

Section 237 of the Judicial Code of this Court, as amended by the Act of February 13, 1925, declares that—

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has

been rendered or passed by the highest court of a state in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of the statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by any party under the Constitution or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph."

All the essential prerequisites to the granting of the writ are present in this case. The judgment was rendered by the highest court of the State of Minnesota and is in every respect a final judgment, not subject to further review in the State court.

The enforcement of said judgment so entered by the State of Minnesota in this action would result in taking the petitioners' property without due process of law, in violation of the XIVth Amendment to the Constitution of the United States.

The enforcement of this judgment so rendered by the Supreme Court of Minnesota would deprive these petitioners, citizens of the State of Maryland, of the protection and the rights guaranteed to them under Article IV, Section 2, of the Constitution of the United States.

The enforcement of said judgment would result in depriving these petitioners of the protection guaranteed to them by Article IV, Section 1, of the Constitution of the United States, and especially that part thereof which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Throughout the trial and appeal of said case it was the position and contention of the respondent that the Company, in issuing said policy of insurance, was doing business in the State of Minnesota, and that under the statutes of the State of Minnesota the courts of that State were not open to the Company or to these petitioners for the purpose of enforcing against the respondent any of the provisions of said contract.

The answer to the complaint interposed by the defendant alleged and set up that the plaintiff was never qualified, permitted, or authorized to transact business within the State of Minnesota, as required by the statutes of said State, and never, in any respect, complied with the statutory requirements necessary to qualify to do business therein, and that the plaintiff had not the right to appeal to the courts of Minnesota to enforce the cause of action set out in said complaint, all of which allegations were denied by the plaintiffs in

their reply thereto. It would therefore appear affirmatively that the petitioners especially set up and claimed a right, privilege, or immunity under the Constitution; that the question of the existence of the right, privilege, or immunity was fairly and fully explained to the State courts; that a decision in regard thereto was necessary and essential to the determination of the case, and that the question thus presented was actually decided by the Supreme Court of Minnesota, and, further, that the State court in its opinion admits the existence and materiality of said constitutional and Federal questions, and that such questions were properly raised.

This brings the case well within the rules laid down by the court in *Adams vs. Russell*, 229 U. S., 353; *Miedreich vs. Lauenstein*, 232 U. S., 236. It is therefore within the sound discretion of this Court to grant a writ of certiorari in this case.

II.

The Supreme Court of the State of Minnesota, in its decision in this case, has refused to follow the rule of this Court laid down in the Benn case, *supra*, alleging as a primary and principal distinction between this and the Benn case that in this case the insurance company has not been sued, or, in other words, that a different rule of law prevails according to whether the parties are plaintiffs or defendants.

The decision of the Minnesota Supreme Court in this case cannot be reconciled with the well-established principles clearly announced by this Court.

Benn vs. Commercial Travelers Association, 261 U. S., 140.

Allgeyer vs. Louisana, 165 U. S., 578.

Hunter vs. Mutual Reserve Life Insurance Co., 218 U. S., 573.

Provident Savings Society vs. Kentucky, 239 U. S., 103.

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Rosenberg Bros. & Co. vs. Curtis Bros. Co., 260 U. S., 516.

St. Louis Cotton Compress Co. vs. Arkansas, 260 U. S., 346.

III.

This Court has heretofore granted a writ for certiorari to review a judgment of the Supreme Court of Minnesota in a case substantially identical with the present case. *Benn vs. Commercial Travelers Association*, 261 U. S., 140.

It is well known that many insurance companies throughout the United States are transacting insurance business in a manner similar to that of the company

in this case. As the Minnesota Supreme Court has reached a result or determination in conflict with the decision of this and other courts on a question of utmost importance to this and other insurance companies similarly conducting their business, it is vital to the constitutional rights of your petitioners and is highly desirable on the part of other insurance companies similarly engaged in business that the questions involved be settled by the final adjudication of this Court.

Respectfully submitted,

MORTON BARROWS,
GEORGE P. METCALF,
Attorneys for Petitioners.

SAINT PAUL, MINNESOTA.

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